



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Global Fuels Limited, Corporation

File: B-225665.2

Date: March 27, 1987

DIGEST

Where protest is dismissed as academic because challenged solicitation line item is canceled, there is no basis for the award of proposal preparation and protest costs, since a prerequisite to the award of such costs is a decision on the merits of the protest.

DECISION

Global Fuels Limited, Corporation has submitted a claim for proposal preparation costs and the costs of pursuing its protest, including attorney's fees, following its protest which we dismissed as academic. The protest arose under request for proposals (RFP) No. DLA600-87-R-0013, issued by the Defense Fuel Supply Center, Defense Logistics Agency (DLA), for fuel for ships' bunkers.

We deny the claim for proposal preparation costs and for the costs of pursuing the protest, including attorney's fees.

The RFP requested offers on several different kinds of fuel for ships' bunkers needed by the government at over 100 seaports. Global's January 27, 1987, protest concerned only line item 7420-30, which was a requirement for 10,000 metric tons of F76, a ship fuel, at St. Theodore, Greece. Global contended that the line item unduly restricted competition and would result in a sole-source award to Motor Oil Hellas (MOH), since St. Theodore was the location of MOH's berthing facility, and MOH strictly limited access to it. DLA reported that it canceled line item 7420-30 on February 12, 1987, after the Navy Petroleum Office found the government's estimated needs at the location to be too small and uncertain to warrant the award of a requirements contract. We dismissed Global's protest as academic, since no award would be made for the challenged line item.

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Global contends that its protest is not academic because it incurred costs in responding to an RFP line item on which it was restricted from competing. Global argues that, because DLA did not treat it fairly, we should decide its protest and grant it proposal preparation and protest costs.

When a challenged solicitation is canceled, the underlying protest becomes academic since no award will be made under the solicitation. See Sunbelt Industries, Inc., B-214414, July 20, 1984, 84-2 C.P.D. ¶ 66. Thus, even where a solicitation is canceled for reasons unrelated to the issues raised by the protester, the protest is academic. See Master Painting Contractors, et al., B-208648 et al., Nov. 8, 1982, 82-2 C.P.D. ¶ 412 (IFB canceled due to lack of funds). Since no award will be made here under the canceled line item, Global's protest is academic and we will not decide the merits of its allegations regarding the canceled RFP line item.

Global is not entitled to the recovery of its proposal preparation costs since it did not submit a proposal for the canceled line item. Regarding its claim for protest costs, it is an essential rule of our bid protest process that a protester's entitlement to costs only arises upon our determination that an agency's procurement actions were in violation of applicable statute or regulation. 4 C.F.R. § 21.6(d)-and (e) (1986). If we make no such determination, then a claim for costs is without foundation. See Monarch Painting Corp., B-220666.3, Apr. 23, 1986, 86-1 C.P.D. ¶ 396. Where, as here, a protest is dismissed as academic, there is no decision on the merits of the protest and thus no basis for the award of costs. See Bru Construction Co., Inc., B-221383.2, May 27, 1986, 86-1 C.P.D. ¶ 487.

The claim is denied.

for *Seymour E. Van*
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